



New South Wales

Retail Leases Amendment Regulation 2010

under the

Retail Leases Act 1994

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Retail Leases Act 1994*.

FRANK TERENZINI, MP
Minister for Small Business

Explanatory note

The object of this Regulation is to amend the *Retail Leases Act 1994* to prescribe matters to be included in the disclosure statement required to be provided by lessors under leases of retail shops. The matters to be disclosed are in line with the national uniform disclosure statement endorsed by the Small Business Ministerial Council.

This Regulation is made under the *Retail Leases Act 1994*, including sections 11 and 85 (the general regulation-making power) and clause 20 of Schedule 3.

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Clause 1 Retail Leases Amendment Regulation 2010

Retail Leases Amendment Regulation 2010

under the

Retail Leases Act 1994

1 Name of Regulation

This Regulation is the *Retail Leases Amendment Regulation 2010*.

2 Commencement

This Regulation commences on 1 January 2011 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Retail Leases Act 1994 No 46

Schedule 2 Lessor and lessee disclosure statements

Omit Part 1. Insert instead:

Part 1

Lessor's disclosure statement

Lessor

Lessee

Premises

Key disclosure items

Note. If the terms "landlord" and "tenant" are substituted for "lessor" and "lessee" in this form, they have the same meanings as "lessor" and "lessee" have, respectively, in the *Retail Leases Act 1994*.

- | | | | |
|---|--|--------------------------|----------------------------|
| 1 | Annual base rent under the lease
(see item 10.1) | \$ | p.a. |
| | | | Including/Excluding
GST |
| 2 | Is rent based on turnover payable by the lessee in
year 1?
(see item 12) | <input type="checkbox"/> | Yes |
| | | <input type="checkbox"/> | No |
| 3 | Total estimated outgoings and promotion and
marketing costs for the lessee in year 1
(see Part 5 and Part 6) | \$ | Including/Excluding
GST |
| 4 | Term of the lease
(see item 5) | | years months |
| 5 | Estimated commencement date of the lease
(see item 5.1) | | / /20 |
| 6 | Estimated handover date of the premises
(see item 7.1) | | / /20 |

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- 7 Does the lessee have an option to renew for a further period (exercised in writing and given to the lessor on or before the last day stated in the option clause)? Yes
 No
(see item 6)
- 8 Does the lease provide the lessee with exclusivity in relation to the permitted use of the premises? Yes
 No
(see item 2.2)

Part 1 Premises

1 Premises details

- 1.1 Street address of premises
[insert street address of premises and, as applicable, shop number, name of the building/centre in which the premises are located, street address of the building/centre]
- 1.2 Plan of premises (if available)
[insert description of premises by reference to a prepared plan. Attach the plan to this disclosure statement as per item 33.1]
- 1.3 Lettable area of premises m²
Actual/Estimate
- Will a survey be conducted? Yes No
- 1.4 Existing structures, fixtures, plant and equipment in the premises, provided by the lessor (excluding any works, fit out and refurbishment described in Part 3)
[Select as appropriate]
- air conditioning
 - cool room
 - floor coverings
 - grease trap
 - hot water service
 - lighting
 - mechanical exhaust
 - painted walls
 - electrical distribution load (3 phase)
 - electrical distribution load (single phase)
 - separate utility meter—gas
 - separate utility meter—water
 - separate utility meter—electricity

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Current term:

years

/ /20 to / /20

Options to renew:

years

/ /20 to / /20

[list any options for further terms held by the lessor under the head lease]

4.4 Is the head lessor's consent to the lease required?

Yes No

Part 2 Term of lease and option/s to renew lease

5 Term of lease

- 5.1 Date lease commences / /20
(see also date of handover at item 7) Actual/Estimate
- 5.2 Length of term years months
- 5.3 Date lease expires / /20
(based on the date indicated at item 5.1 as the date the lease commences)

6 Option/s to renew lease

6.1 Option/s details

No options to renew lease

Options as follows:

Length of option	Period of option	Exercise date
years	/ /20 to	/ /20 to
	/ /20	/ /20
Actual/Estimate		
years	/ /20 to	/ /20 to
	/ /20	/ /20
Actual/Estimate		
<i>[List all options to renew lease]</i>		

Part 3 Works, fitout and refurbishment**7 Date of handover**

- 7.1 Date of handover / /20
 (if different to the date the lease commences Actual/Estimate
 indicated at item 5.1)

8 Lessor's works

- 8.1 Description of works to be carried out by the lessor before the date the lease commences
[exclude any works that form part of the lessee's fit out at item 9]
- 8.2 Estimate of expected contribution by the lessee towards the cost of the lessor's works \$
[see also outgoings (item 14) in relation to any maintenance and repair outgoings]

9 Lessee's fit out works

- 9.1 Fit out works to be carried out by the lessee
 (excluding the lessor's works at item 8)
- 9.2 Is the lessor providing any contribution towards the cost of the lessee's fit out?
 Yes
[insert details of lessor's contribution]
 No
- 9.3 Does the lessor have requirements as to the quality and standard of shop front and fit out?
 Yes
[insert details or provide fit out guide]
 No

Part 4 Rent**10 Annual base rent**

- 10.1 Starting annual base rent: \$
 (i.e. when the lease commences) Including/Excluding GST
- 10.2 Rent free period
[describe any rent free period]
- 10.3 Date of rent commencement: / /20

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10.4 How rent payments are to be made?

[insert description of how rent is paid—eg by equal monthly instalments in advance on the first day of each month, other than the first and last payments which are calculated on a pro-rata basis]

11 Rent adjustment (rent review)

11.1 Rent adjustment date(s) and adjustment method

[insert a list of all rent adjustment dates and adjustment methods—eg fixed increase by X%, fixed increase by \$X, current market rent, indexed to CPI]

12 Rent based on turnover

12.1 Is a rent based on turnover payable by the lessee?

(Note, the lease must specify the method by which a rent based on turnover is to be determined)

Yes

[insert method of calculating the turnover rent]

No

12.2 If a rent based on turnover is not required to be paid, does the lessor require the lessee to provide details of turnover?

Yes No

Part 5 Outgoings

13 Contribution by lessee towards lessor's outgoings

13.1 Is the lessee required to pay or contribute towards the lessor's outgoings?

Yes No

13.2 Describe any period during which the lessee is not required to pay outgoings

13.3 Date on which payment of outgoings is to commence:

/ /20

13.4 Formulae for apportioning outgoings

[insert formulae on how outgoings payable by lessee are to be apportioned]

14 Outgoings estimates (annual) for the 12 month period **/ /20 to / /20**

[State which of the following are payable by the lessee. The lessor may be prevented by the Retail Leases Act 1994 from claiming certain costs.]

Estimate (including GST) per annum for the building/centre

14.1 Administration

Administration (excluding management fees and wages): \$

Audit fees: \$

Management fees: \$

14.2 Air conditioning/temperature control

Air conditioning maintenance: \$

Air conditioning operating costs: \$

14.3 Building/centre management

Body corporate/strata levies: \$

Building intelligence services: \$

Customer traffic flow services: \$

Energy management services: \$

Gardening and landscaping: \$

Insurance: \$

Pest control: \$

Ventilation: \$

14.4 Building/centre security

Caretaking: \$

Emergency systems: \$

Fire levy: \$

Fire protection: \$

Security services: \$

14.5 Cleaning

Cleaning consumables: \$

Cleaning costs (excluding consumables): \$

14.6 Communications

Post boxes: \$

Public telephones: \$

14.7 Customer facilities

Car parking: \$

Child minding: \$

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- Escalators: \$
- Lifts: \$
- Uniforms: \$
- 14.8 Customer information services
 - Information directories: \$
 - Public address/music: \$
 - Signage: \$
- 14.9 Government rates and charges
 - Local government rates and charges: \$
 - Water sewerage and drainage rates and charges: \$
 - Land tax: \$
- 14.10 Repairs
 - Repairs and maintenance: \$
 - Sinking fund for repairs and maintenance: \$
 - Note.** Under section 23 of the *Retail Leases Act 1994*, the lessor may not recover the capital costs of the building/centre from the lessee.
- 14.11 Utility services
 - Electricity: \$
 - Gas: \$
 - Oil: \$
 - Water: \$
- 14.12 Waste management
 - Sewage disposal: \$
 - Waste collection and disposal: \$
- 14.13 List any other outgoings: \$
- 14.14 Total outgoings for the building/centre: \$
- 14.15 Formula for determining lessee's share of the total outgoings for the building/centre: \$
- 14.16 Estimated lessee contribution to outgoings: \$

Part 6 Other costs

15 Advertising and promotional costs

- 15.1 Is the lessee required to contribute towards advertising and promotional costs (including marketing fund contributions) for the building/centre?
 Yes No
- 15.2 Lessee's contribution to advertising and promotional costs per annum:
 Not applicable

- Yes—contribution per annum is \$ Actual/Estimate
- Yes—contribution per annum is % of the rent (excluding GST) payable from time to time
- Yes [*insert details of lessee's contribution per annum and how this is determined*]

16 Other monetary obligations and charges

- 16.1 Outline any costs arising under the lease including up-front costs or other costs not part of the outgoings and not referred to elsewhere in this disclosure statement:

[*eg interest and legal costs*]

Part 7 Alteration works (including renovations, extensions, redevelopment, demolition)

17 Alteration works

- 17.1 Are there any alteration works, planned or known to the lessor at this point in time, to the premises or building/centre, including surrounding roads, during the term or any further term or terms?

Yes

[*insert details of the proposed works*]

No

18 Clauses in lease dealing with relocation and demolition works

- 18.1 Clause(s) in lease providing for relocation of lessee:

Clause(s) of the lease

Not applicable

- 18.2 Clause(s) in lease providing for demolition of the premises or building/centre

Clause(s) of the lease

Not applicable

Part 8 Trading hours

19 Core trading hours relevant to lessee

Monday:	am to	pm
Tuesday:	am to	pm
Wednesday:	am to	pm
Thursday:	am to	pm

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Friday:	am to	pm
Saturday:	am to	pm
Sunday:	am to	pm
Public holidays:	am to	pm

20 Lessee access to premises outside core trading hours

20.1 Is the lessee permitted to access the premises and building/centre outside core trading hours?

Yes

[provide details including cost of access]

No

Part 9 Retail shopping centre details

Note. This Part must only be completed if the premises are in a retail shopping centre as defined in section 3 of the *Retail Leases Act 1994*.

21 Retail shopping centre details

21.1 Total number of shops: shops

21.2 Gross lettable area of the centre m²

Actual/Estimate

22 Annual turnover of the shopping centre

22.1 Annual estimated turnover (where collected): \$

Including GST/

Excluding GST

22.2 Annual estimated turnover for specialty shops, per m² (where collected)

Food \$ per m²

Including GST/

Excluding GST

Non food \$ per m²

Including GST/

Excluding GST

Services	\$	per m ²
		Including GST/
		Excluding GST

23 Major/anchor lessees

23.1 Major/anchor lessees and lease expiry dates:

[list all major and anchor lessees (eg department stores, discount department stores, supermarkets) and the dates on which leases held by those lessees expire]

24 Floor plan and tenancy mix

24.1 Floor plan showing tenancy mix, common areas, common area trading, kiosks and major lessees:

Attached as per item 34.1

24.2 Does the lessor assure the lessee that the current tenant mix will not be altered by the introduction of a competitor?

Yes No

25 Customer traffic flow information

25.1 Does the lessor collect customer traffic flow information?

Yes—attached as per item 34.2

No

26 Casual mall licensing for common areas

26.1 Do you adhere to the Shopping Centre Council of Australia's Casual Mall Licensing Code of Practice?

Yes—attached as per item 34.3

No

Part 10 Other disclosures**27 Other disclosures**

27.1 Are there any current legal proceedings in relation to the lawful use of the premises or building/centre?

Yes

[provide details]

No

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28 Representations by lessor

28.1 Any other representations by the lessor or the lessor's agent:

[lessor to insert details of any other oral or written representations made by the lessor or the lessor's agent]

Part 11 Lessor acknowledgements and signature

29 Acknowledgements by lessor

By signing this disclosure statement, the lessor confirms and acknowledges that:

- this disclosure statement contains all representations in relation to the proposed lease by the lessor and the lessor's agents as at the date of this disclosure statement,
- this disclosure statement reflects all agreements that have been made by the parties,
- the lessor has not knowingly withheld information which is likely to have an impact on the lessee's proposed business.

Warnings to lessor when completing this disclosure statement:

- The lessee may have remedies including termination of lease if the information in this statement is misleading, false or materially incomplete.

30 Lessor's signature

30.1 Name of lessor

[insert name of lessor]

30.2 Signed by the lessor or the lessor's agent for and on behalf of the lessor

.....

30.3 Name of the lessor's authorised representative or lessor's agent

[insert name of person signing with the authority of the lessor]

30.4 Date

Part 12 Lessee acknowledgements and signature

31 Acknowledgements by the lessee

By signing this disclosure statement, the lessee confirms and acknowledges that the lessee received this disclosure statement.

Before entering into a lease, lessees should consider these key questions:

- Does the planning authority allow your proposed use for the premises under planning law?
- Is the security of your occupancy affected by:
 - mortgages, charges or encumbrances granted by the lessor?
 - rights and obligations under a head lease?

- Do the premises comply with building and safety regulations? Are the premises affected by outstanding notices by any authority?
- Could your trading be affected by disturbances or changes to the building/centre?
- Does the lessor require you to refurbish the premises regularly or at the end of the lease?
- Can the lessor end the lease early even if you comply with the lease?
- Are all the existing structures, fixtures and plant and equipment in good working order?
- Are you required to make good the premises at the end of the lease?
- Is the tenancy mix of the shopping centre (if applicable) likely to change during the term of the lease? (see item 24.2)

32 Lessee’s signature

It is important that a lessee seek independent legal and financial advice before entering into a lease.

[Section 11A of the Retail Leases Act 1994 requires a lessee’s disclosure statement to be provided to the lessor within 7 days (or any agreed further period) of the lessee receiving the lessor’s disclosure statement. The lessee may be liable to a penalty for an offence under that Act if the lessee’s disclosure statement is not provided.]

32.1 Name of lessee

[insert name of lessee]

32.2 Signed by the lessee or for and on behalf of the lessee

.....

32.3 Name of the lessee’s authorised representative

[insert name of person signing with the authority of the lessee]

32.4 Date / /20

Part 13 Attachments

33 List of attachments

33.1 Plan of premises (see item 1.2)

- Yes
- Not applicable

33.2 Head lease or Crown lease (see item 4.2)

- Yes
- Not applicable

33.3 Additional attachments

[list of any additional attachments]

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34 List of attachments—retail shopping centre

- 34.1 Floor plan (see item 24.1)
- Yes
- Not applicable
- 34.2 Customer traffic flow statistics (see item 25.1)
- Yes
- Not applicable
- 34.3 Casual mall licensing policy (see item 26.1)
- Yes
- Not applicable
- 34.4 Additional attachments relating to the retail shopping centre
[list of any additional attachments]